

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER:99-0135
GROSS AND ADJUSTED GROSS INCOME TAX
For Years 1992, 1993, 1994, and 1995**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Gross Income Tax — Lease Payments from Indiana

Authority: *Enterprise Leasing Co. of Chicago v. Indiana Dep't of State Revenue*, 779 NE.2d 1284 (Ind. Tax Ct. 2002), review denied.

Taxpayer protests the assessment of Gross Income Tax on auto lease payments sourced to Indiana.

II. Adjusted Gross Income Tax — Apportionment of income to Indiana

Authority: IC § 6-3-2-2

Taxpayer protests the proposed assessments based on an increased apportionment of Indiana income.

III. Adjusted Gross Income Tax — Addbacks of local taxes

Authority: 45 IAC 3.1-1-8; 45 IAC 17-3-1.1.(3)

Taxpayer protests the addback of local taxes to taxpayer's adjusted gross income.

STATEMENT OF FACTS

Taxpayer is primarily engaged in the business of retail leasing, retail installment lending, wholesale floor plan lending, third party servicing, and commercial lending such as mortgage and working capital loans (for auto dealers). Taxpayer also offers leasing and installment lending businesses through various automobile dealerships throughout the United States. These activities are not performed in every state.

Taxpayer filed a protest of an assessment of gross income tax on lease payments and related income from the leases that the auditor sourced to Indiana. The taxpayer and Department determined that the facts related to the protest on lease arrangements were closely related to the *Enterprise Leasing* court case and deferred this Letter of Findings until the resolution of that case.

I. Gross Income Tax — Application to lease payments from Indiana

DISCUSSION

This issue was held pending the resolution of a court case, which has now been resolved. The decision by the tax court, *Enterprise Leasing Co. of Chicago v. Indiana Dep't of State Revenue*, 779 NE.2d 1284 (Ind. Tax Ct. 2002), review denied. By the Department's prior arrangement, taxpayer's protest of this issue is sustained pursuant to the court's holding in that case.

FINDING

Taxpayer's protest is sustained.

II. Adjusted Gross Income Tax — In-state sales

DISCUSSION

Taxpayer argues that other activity, aside from the leases at issue above, was improperly apportioned to Indiana. The relevant statute is IC 6-3-2-2, which states in relevant parts:

(a) With regard to corporations and nonresident persons, "adjusted gross income derived from sources within Indiana", for the purposes of this article, shall mean and include:

- (1) income from real or tangible personal property located in this state;
- (2) income from doing business in this state;
- (3) income from a trade or profession conducted in this state;
- (4) compensation for labor or services rendered within this state; and
- (5) income from stocks, bonds, notes, bank deposits, patents, copyrights, secret processes and formulas, good will, trademarks, trade brands, franchises, and other intangible personal property if the receipt from the intangible is attributable to Indiana under section 2.2 of this chapter.

...

(b) Except as provided in subsection (l), if business income of a corporation or a nonresident person is derived from sources within the state of Indiana and from sources without the state of Indiana, then the business income derived from sources within this state shall be determined by multiplying the business income derived from sources both within and without the state of Indiana by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (3).

...

Taxpayer asserts that none of the other income apportioned to Indiana was related to Indiana activity. Aside from the income excluded under the holding referenced in Issue, I, taxpayer has made no showing that any other income was improperly sourced to Indiana. Taxpayer has failed to provide either an argument or documentation to refute the audit's findings and the protest is denied.

FINDING

Taxpayer's protest is denied.

III. State Gross Retail Tax—Use tax

DISCUSSION

Taxpayer argues that an audit adjustment to add back property taxes as required by 45 IAC 3.1-1-8 defining adjusted gross income and required addbacks of state and local taxes. Taxpayer offers no explanation as to why the addbacks were reported for two of the first two audit years and then subsequently not included for the remainder of the period.

Taxpayer's argument centers on 45 IAC 17-3-1.1(3) which is a Financial Institutions Tax definition of adjusted gross income and ultimately irrelevant to the Adjusted Gross Income Tax adjustment.

FINDING

Taxpayer's protest is denied.